

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 03-0295
Sales and Withholding Tax
Responsible Officer
For the Tax Period 1999-2000

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ISSUE

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-3-4-8(f), IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The Indiana Department of Revenue assessed sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit said taxes during the tax period 1999-2000. The taxpayer protested the assessments of tax. A hearing was held. The department determined that the taxpayer was responsible for the taxes due to the state before May 9, 2000. The taxpayer requested and was granted a rehearing. This Supplemental Letter of Findings results.

1. Sales and Withholding Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.” Pursuant to Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 279 (Ind.1995) any officer, employee, or other person who has the authority to see taxes are paid has the statutory duty to remit sales and withholding taxes to the state.

The Letter of Findings found that the taxpayer was the person with the authority to see that the trust taxes were remitted to the state prior to May 9, 2000. On that date, the corporation’s default on its primary loan caused the primary lender to require the execution of a document known as the “Surrender Agreement.” This agreement gave the lender official control over all of the corporation’s collateral which included inventory, accounts receivable, most equipment, and junior security interests in all other assets. Concurrently, the lender took control over the corporation’s business premises and operations. On that date, the lender became the party with the duty to remit trust taxes to the state.

The taxpayer disagreed with this decision. The taxpayer contended that even prior to May 9, 2000, the primary lender was the party who actually made all decisions concerning the financial and operational affairs of the corporation. At the rehearing, the taxpayer offered additional evidence concerning the relationship between the taxpayer and the primary lender during the period leading up to the execution of the Surrender Agreement. The taxpayer also offered additional evidence on the actual operations of the corporation during this period. While it is clear that the primary lender was deeply involved in the corporation’s affairs, the taxpayer was still the President. As the President of the corporation, the taxpayer had the responsibility to oversee the corporation. As the President, the taxpayer had the final responsibility to insure that the corporation fulfilled its financial responsibilities by remitting trust taxes to the Indiana Department of Revenue. Therefore, the taxpayer had the statutory duty to remit the sales taxes and is personally liable for the payment of those taxes.

Finding

The taxpayer’s protest is denied.